

Ratzenberger



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Rajindar N. Khanna - Waiver - Erroneous Relocation  
Travel Advance

File: B-225263

Date: June 28, 1988

## DIGEST

An appointee to a manpower shortage category position was issued orders erroneously authorizing reimbursement of relocation expenses as though he were a transferred employee, and he was given an advance of funds to cover some of those expenses. After he completed travel to his duty station the error was discovered. The employee has no legal right to reimbursement of the expenses of the house-hunting trip and temporary quarters subsistence expenses he incurred, even though the orders purportedly authorized reimbursement of these expenses, since the expenses were in excess of those prescribed by statute and the government is not bound by orders or advice contrary to the applicable statutes. The government's resulting claim against the employee for repayment of the travel advance can be considered for waiver under 5 U.S.C. § 5584 to the extent that (1) the advance was used for the erroneously authorized temporary quarters subsistence expenses and (2) the employee remains indebted to the government for repayment of the amounts advanced after the advance has been applied against the legitimate expenses. Since in this case the employee's legitimate expenses exceed the amount of the travel advance, however, there is no net indebtedness which would be appropriate for waiver consideration.

## DECISION

A finance and accounting officer with the U.S. Army Corps of Engineers, Baltimore District, has requested an advance decision concerning the claim of Mr. Rajindar N. Khanna for certain relocation expenses he was erroneously authorized in his travel orders. For the reasons explained below, we hold that Mr. Khanna may not be reimbursed for the expenses he claims. Moreover, the government's claim for repayment of the funds Mr. Khanna received as a travel advance may not be waived for the reasons set forth below.

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## BACKGROUND

Mr. Khanna was hired by the Corps of Engineers as an Electrical Engineer, GS-12, a shortage category position, and directed to report to Fort Meyer, Arlington, Virginia, by travel orders dated July 1, 1986. He was erroneously authorized reimbursement of expenses as though he were an incumbent employee undergoing a permanent change of station, including the expenses of a househunting trip and temporary quarters subsistence expenses, and he was given a travel advance in the amount of \$3,280. Block 17 of Mr. Khanna's travel order contained the following statement:

"Employee authorized househunting trip to begin on 12 July 1986 through 17 July 1986. Employee is authorized [sic] for advance for househunting trip. The full amount will be given to the employee when he reports to his new duty station, due to the fact that the employee does not wish an advance to be issued for househunting trip."

Mr. Khanna had performed a househunting trip, reported to Fort Meyer on July 21, 1986, and had begun to occupy temporary quarters when it was discovered that his travel orders were in error. As a new hire in a manpower shortage category position, Mr. Khanna's authorized reimbursement should have been limited to his travel, the travel of his family, and the transportation of his household goods. The Corps of Engineers determined that Mr. Khanna's entitlement to reimbursement for those items equaled \$4,601.84. It set off \$3,280, the amount of his travel advance, from that amount and determined that he should be reimbursed the difference, which equals \$1,321.84. Mr. Khanna's travel orders were amended to reflect the change in his entitlements on August 5, 1986, and he was notified of the error. Mr. Khanna's present claim of \$2,665.27 consists of \$525 for a househunting trip and \$2,140.27 for 42 days of temporary quarters.

## ANALYSIS AND CONCLUSIONS

The Comptroller General has long held that an employee must bear the expense of travel and transportation to his first permanent duty station in the absence of a specific statute providing otherwise. See 63 Comp. Gen. 31 (1983); 53 Comp. Gen. 313 (1973); 30 Comp. Gen. 373 (1951). One such statutory provision, and the one pursuant to which Mr. Khanna derives his entitlements, is 5 U.S.C. § 5723 (1982). That provision authorizes reimbursement of the

travel and transportation expenses of a manpower short-age category position appointee and immediate family and includes the movement of his household goods from his place of residence at the time of selection to his first duty station. However, it does not include reimbursement of a househunting trip, temporary quarters subsistence expenses or the other expenses authorized in 5 U.S.C. § 5724a for employees who are being transferred from one official station to another.

The Comptroller General has no authority to authorize reimbursement of amounts greater than those provided for by the applicable statutory and regulatory authorities. We have consistently held that provisions of travel orders which do not conform to the applicable statutes and regulations are ineffective and cannot create an entitlement to travel allowances. See 63 Comp. Gen. 4 (1983). Furthermore, with regard to erroneous advice, it is a well-settled rule of law that the government cannot be bound beyond the actual authority conferred upon its agents by statute or regulation. As a result, the government is not prevented from repudiating erroneous advice given by one of its officials. See 59 Comp. Gen. 28, 31 (1979) and cases cited therein. Hence, we conclude that Mr. Khanna has no legal right to reimbursement of the expenses of the househunting trip and the temporary quarters subsistence expenses he incurred, even though his orders purportedly authorized reimbursement of these expenses.

Since 1968, however, the Comptroller General has had the authority, as granted by 5 U.S.C. § 5584, to waive a federal employee's liability for overpayments of pay or allowances where collection would be "against equity and good conscience and not in the best interests of the United States." Under an amendment to 5 U.S.C. § 5584 enacted by Pub. L. No. 99-224, approved December 28, 1985, 99 Stat. 1741, the Comptroller General's waiver authority was extended to claims arising from erroneous payments of travel and transportation expenses.

In the legislative history of Pub. L. No. 99-224, at page 2 of House Report No. 102, 99th Cong., 1st Sess. (1985), reprinted in 1985 U.S. CODE CONG. & AD. NEWS 2659, 2660, it was stated that:

". . . GAO's experience demonstrates that hardship has been caused in many travel, transportation and relocation cases and that employees have been required to make substantial refunds to the Government as a result of circumstances which were not their fault.

This is particularly true when, as the General Accounting Office has found, many of these claims arise from erroneous agency authorizations which an employee relies on in good faith to his detriment."

We consider a travel advance payment to be erroneous and subject to waiver to the extent it was made to cover the expenses erroneously authorized and the employee actually spent the advance in reliance on the erroneous travel orders.<sup>1/</sup> However, waiver is only appropriate to the extent that an employee is indebted to the government for repayment of the amounts advanced. So, for example, if an employee has both legitimate expenses and expenses which should not have been authorized, the travel advance must first be applied against the legitimate expenses. Any outstanding amount of the advance may then be applied against the erroneously authorized expenses and that amount could be considered for waiver.

This approach is consistent with the view that travel advances are made for expenses which are legally supportable; the advance is not meant to represent a final determination of the amount to which a traveler is entitled. Travelers who receive advanced travel funds are on notice that they are entitled to be reimbursed only for legally authorized expenditures. Further, we believe that this approach is in accord with our line of cases in which we hold that there is no authority to grant waiver in cases where no payment has been made. This situation occurs when an error is discovered at voucher settlement before the employee has been paid and there had been no travel advance. See Rebecca T. Zagrinski, B-224850, Sept. 10, 1987, and cases cited.

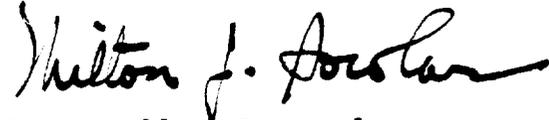
The Corps of Engineers correctly applied the advance of \$3,280 against the legitimately authorized expenses of \$4,601.84. Therefore, in this case there is no net indebtedness, and the government has no claim to assert against Mr. Khanna which would provide a basis for waiver.

Accordingly, Mr. Khanna has no legal right to reimbursement of the expenses of the househunting trip and the temporary

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<sup>1/</sup> It should be emphasized that an erroneous travel advance is appropriate for waiver consideration only when the employee expends the money. The travel advance would still be considered merely a loan to the employee to the extent that no expenditures or expenditures not in accordance with those authorized by the travel order are incurred.

quarters subsistence expenses he incurred. Further, waiver of Mr. Khanna's travel advance in the amount of those expenses is not appropriate since there is no net indebtedness after the advance is applied against the legitimately authorized expenses.

*for*   
Comptroller General  
of the United States